



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 03, 2022

IN THE MATTER OF:

Appeal Board No. 624909

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board No. 624728, the claimant and the Commissioner of Labor appeal from the decision of the Administrative Law Judge filed July 13, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective March 13, 2020 through May 20, 2020, on the basis that the claimant did not comply with reporting requirements, as modified to be effective April 8, 2020 through May 20, 2020.

In Appeal Board Nos. 624907, 624908 and 624909, the claimant appeals from the decisions of the Administrative Law Judge filed July 13, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 13, 2020 through May 20, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$3,906.00 in benefits recoverable pursuant to Labor Law §

597 (4), and Federal Pandemic Unemployment Compensation benefits of \$4,200.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 31 effective days and charging a civil penalty of \$585.90 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board No. 624907, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made regarding the issue of availability for employment. The findings of fact and the opinion of the Administrative Law Judge with respect to that issue are fully supported by the record and, therefore, are adopted as

the findings of fact and the opinion of the Board.

In Appeal Board Nos. 624728, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was in Ukraine from March 13, 2020 to May 20, 2020. He planned to be in Ukraine for two weeks visiting family. While he was in Ukraine, the borders closed, and he was not able to fly back to the United States. The claimant filed a claim for benefits, which was made effective March 23, 2020.

OPINION: The credible evidence establishes that the claimant was in Ukraine for personal reasons from March 13, 2020 through May 20, 2020. Ukraine is not a signatory to the Interstate Benefits Payment Plan. Therefore, he could not comply with reporting requirements while he was in that country (see Matter of Mikheil, 206 AD3d 1422 [3d Dept 2022]). Accordingly, we conclude that the claimant is ineligible for benefits for the period from March 13, 2020 through May 20, 2020.

In Appeal Board Nos. 624908 and 624909, however, our review of the record reveals that the case should be remanded to hold a hearing concerning the issues of recoverable overpayments of regular and FPUC benefits, willful misrepresentation and civil monetary penalty. The record was not sufficiently developed with respect to these issues. At the remand hearing, the Judge shall question the claimant with respect to whether the claimant or anyone acting on his behalf certified for benefits on May 26, 2020 for the benefit week ending May 24, 2020, and how they certified with respect to whether he was ready, willing and able to work during that benefit week. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

DECISION: In Appeal Board No. 624728, the decision of the Administrative Law Judge, insofar as it modified the initial determination holding the claimant ineligible to receive benefits, effective March 13, 2020 through May 20, 2020, on the basis that the claimant did not comply with reporting requirements, is reversed.

In Appeal Board No. 624907, the decision of the Administrative Law Judge, insofar as it sustained the initial determination holding the claimant ineligible to receive benefits, effective March 13, 2020 through May 20, 2020, on the basis that the claimant was not available for employment, is affirmed.

In Appeal Board Nos. 624728 and 624907, the initial determinations, holding the claimant ineligible to receive benefits, effective March 13, 2020 through May 20, 2020, on the basis that the claimant did not comply with reporting requirements; and holding the claimant ineligible to receive benefits, effective March 13, 2020 through May 20, 2020, on the basis that the claimant was not available for employment are sustained.

In Appeal Board Nos. 624908 and 624909, the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations charging the claimant with an overpayment of \$3,906.00 in benefits recoverable pursuant to Labor Law § 597 (4), and Federal Pandemic Unemployment Compensation benefits

of \$4,200.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 31 effective days and charging a civil penalty of \$585.90 on the basis that the claimant made willful misrepresentations to obtain benefits, are rescinded.

The claimant is denied benefits with respect to the issues decided herein.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of recoverable overpayments of regular and FPUC benefits, willful misrepresentation and civil monetary penalty, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of recoverable overpayments of regular and FPUC benefits, willful misrepresentation and civil monetary penalty, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case,

including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER